

2011 Lawyer Discipline Rule Proposals

In Legislative Format

(October 7, 2011)

List of Rules to be Amended or Discussed:¹

Rule 32(b)(2) through (9)

Rule 46(f)(15) and (16)

Rule 47(g), (h)(3), and (i)

Rule 50 (c), (e), (f), and (i)

Rule 52(a), (b), (c), (d), and (h)

Rule 53(b)(3), and (4)

Rule 54 (g)

Rule 55(b)(2)(A)(ii), Rule 55(b)(2)(B), (c)(1)(D) & (3), and (4)(B)

Rule 56(c)

Rule 58(c) and (d)

Rule 59(c)

Rule 60(a)(2), and (b)(2)(A) and (B)

Rule 61(c)(2) and (c)(2)(A) and (D)

Rule 64(c), (e)(2)(A) and (B), and (f)(1)(B)

Rule 65(a)(3)(A), (B), (C) and (D)

Rule 70(a)(3), (4) and (5), and (g)

Rule 71(e)

¹ Additions are underlined and deletions are marked by strikethroughs.

Rule 32. Organization of State Bar of Arizona

(a) Organization [No change]

(b) Definitions. [No change]

1. [No change]

2. ~~“Commission” means Disciplinary Commission of the Supreme Court of Arizona.~~

32. ~~“Court” means Supreme Court of Arizona.~~

43. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

54. “Discipline proceeding” and “disability proceeding” mean any action involving a respondent pursuant to the rules relating thereto. Further definitions applying to such proceedings are stated in the rule on disciplinary jurisdiction.

65. “Member” means member of the state bar, the classifications of which shall be as set forth in this rule.

76. “Non-member” means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.

87. “Respondent” means any person subject to the jurisdiction of the court against whom a charge is received for violation of these rules.

98. “State bar” means the State Bar of Arizona created by rule of this court.

Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions

(f) Definitions. ~~Where~~ When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

15. “Hearing panel” means the three-member panel that ~~conducts hearings on the merits of complaints seeking disciplinary action against a lawyer~~ has the powers and duties set forth in Rule 52(g).

16. “Member” means member of the state bar, the classifications of which ~~shall be as set forth in this rule~~ are set forth in Rule 32(c)(1).

Rule 47. General Procedural Matters

(g) Transcript of Hearings. The disciplinary clerk shall cause a verbatim record to be made of all evidentiary hearings and oral arguments, or of other proceedings upon request of the presiding disciplinary judge or a party. Testimony recorded by electronic means is admissible for the same purposes as transcripts provided by certified reporters. Any party may request a certified reporter at that party's own expense. Upon request of the presiding disciplinary judge or the hearing panel, the disciplinary clerk shall obtain and file a copy of the written transcript of the hearing and serve a copy on the state bar and respondent. A party requesting a transcript shall arrange for transcription at the party's expense. If the record was not made by a certified reporter, the disciplinary clerk shall provide a copy of the verbatim recording to the party. If transcribed, the party shall file a copy of the transcript with the disciplinary clerk and serve a copy on the opposing party. Transcripts shall be prepared in accordance with Rule 30. ~~The party shall file a copy of the transcript with the disciplinary clerk and serve a copy on the opposing party.~~ The costs of the services of a certified reporter and transcripts may be included in the costs of adjudication that are assessed against the respondent pursuant to Rule 60(b).

(h) Subpoena Power. Except as otherwise provided, the disciplinary clerk shall have the power to issue subpoenas. Service of subpoenas shall be as set forth in paragraph (c)(2) of this rule.

3. Objection to Issuance of Subpoena. A party or a non-party, or a person or entity having an interest in the subject matter, who has been subpoenaed may, within five (5) days of service or such other time as the committee or presiding disciplinary judge may order, file a written objection with the committee in the case of a request for an investigative subpoena, or with the presiding disciplinary judge in the case of a hearing subpoena. The chair of the committee or presiding disciplinary judge, as appropriate, may rule on the objection without oral argument.

(i) Subpoenas; Form.

1. Subpoenas for the attendance of witnesses and the production of books and records shall be in substantially the following form:

BEFORE THE PRESIDING DISCIPLINARY JUDGE
(THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE; CHIEF BAR
COUNSEL)

In the Matter of a Member)
of the State Bar of Arizona)
)
)
)
_____)

Bar No. _____

SUBPOENA

or SUBPOENA DUCES

TECUM

STATE OF ARIZONA

TO: (Name of Witness)

You are hereby directed to appear and attend before (Bar Counsel of the State Bar of Arizona) (Respondent and/or Respondent's Counsel) (the Attorney Discipline Probable Cause Committee) (Presiding Disciplinary Judge) of the Supreme Court of Arizona, at (address), in (city), _____ County on (day), _____ (date) _____, 20____, at the hour of ____ o'clock _____. m., then and there to testify in the above entitled matter.

(If the production of books, etc., is desired, add "and to bring with you the following:" and describe same).

BE WARNED THAT for failure to appear and attend as herein required, you will be deemed to be in contempt and answerable in court as provided by these rules.

By order of (the chair of the Attorney Discipline Probable Cause Committee) (the Presiding Disciplinary Judge) of the Supreme Court of Arizona.

Issued on _____, 20__ at _____, Arizona.

(Name)

(Presiding Disciplinary Judge)

(Chair, Attorney Discipline Probable Cause Committee)~~Attorney Regulation Committee;~~

(Chief Bar Counsel)

(Disciplinary clerk)

Whose Address is

_____, Arizona

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

If this subpoena asks you to produce and permit inspection and copying of designated books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless the subpoena states that you must appear for a deposition, hearing or trial. See Rule 45(c)(23)(A) of the Arizona Rules of Civil Procedure.

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 45(d)(14) of the Arizona Rules of Civil Procedure.

YOUR RIGHT TO OBJECT

The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The presiding disciplinary judge enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within five (5) days after it is served upon you, or before the time specified for compliance, by filing a written objection with the Attorney Discipline Probable Cause Committee or the presiding disciplinary judge, as appropriate.

If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the documents, communication or item not produced so that the demanding party can contest the claim. See Rule 45(d)(25)(C) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing you do not need to comply with the subpoena until you are ordered to do so.

If you are not a party to the litigation, or an officer of a party, the presiding disciplinary judge may issue an order to protect you from any significant expense resulting from the inspection and copying commanded.

You may also file a motion with the presiding disciplinary judge to quash or modify the subpoena if the subpoena:

- (i) does not provide a reasonable time for compliance;

- (ii) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient

place fixed by an order of the presiding disciplinary judge, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;

(iii) requires the disclosure of privileged or protected information and no waiver or exception applies;

(iv) subjects you to an undue burden. See Rules 45(c)(35)(AB)(iii) and 45(e) of the Arizona Rules of Civil Procedure.

If this subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial trade information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;

the presiding disciplinary judge may either quash or modify the subpoena, or order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that you will be reasonably compensated. See Rule 45(ee)(3)(B) of the Arizona Rules of Civil Procedure.

Rule 50. Attorney Discipline Probable Cause Committee

(a) {No changes}

(b) {No changes}

(c) Chair and Vice-Chair. The chief justice shall appoint lawyer members as chair and vice chair of the committee for a term to be determined by the chief justice. The chair shall exercise overall supervisory control of the committee and may rule on procedural motions. The vice-chair shall assist the chair and shall serve as chair in the chair's absence and on any matters in which the chair is recused.

(d) {No changes}

(e) Powers and Duties of the Committee. Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, and to:

1. As deemed appropriate by the Chair, Meet meet and take action in no less than three-member person panels, each of which shall include a public member. All members of the panel must participate in the vote. A member of the panel may participate by remote access. Rule 50(f) does not apply to panels. as deemed appropriate by the chair

2. to 4 {No changes}

- (f) Meetings, Quorum and voting. The meetings of the committee are not open to respondent, respondent's counsel, or the public. The committee shall have a quorum to conduct business and for all official actions. A quorum consists of a majority of the committee. A majority of the votes of the members present and participating in the vote shall decide matters arising at any meeting of the committee. ~~The committee shall act only with the concurrence of a majority of the members of a panel or of the committee, if meeting en banc.~~ A member may participate in the meetings by remote access.
- (g) {No changes}
- (h) {No changes}
- (i) Alternate Members. If it appears that a significant number of members who may properly render a decision may not be present at the meeting, or may not be able to act in a particular case, the committee chair, or vice-chair if the chair has been recused, may appoint, for that member or for that case only, the number of ~~ad hoc~~ alternate members necessary to restore the committee to full membership or at least achieve a quorum of the committee. Alternate members shall be appointed based on the same criteria as committee members.

Rule 52. Pool for Hearing Panels and settlement officers

- (a) Appointment. The chief justice shall appoint a pool of volunteer attorney and public members to serve on hearing panels. Attorney members of the pool may also serve as settlement officers. An attorney member shall have been an active or judicial member of the state bar for at least five (5) of the seven (7) years preceding his or her appointment.
- (b) Hearing Panels. Hearing panels are hereby established and empowered to act in accordance with these rules. Each hearing panel shall consist of the presiding disciplinary judge, who shall serve as chair of the hearing panel, one volunteer attorney member, and one volunteer public member. To the extent practicable, at least one of the volunteer members shall reside in the same general geographic area as the respondent.
- (c) Terms of Office. The volunteer pool members shall be appointed for fixed, staggered terms, three (3) year terms. Pool members shall serve at the pleasure of the court and may be dismissed from service at any time by the court. A pool

member whose term has expired and who is serving as a hearing panel member may continue to serve as a panel member until the conclusion of any proceeding commenced before the expiration of the term, and decision, and until a successor is appointed. The presiding disciplinary judge shall be appointed to each hearing panel by virtue of the position and shall serve in that capacity while employed as the presiding disciplinary judge. After the initial appointments of the volunteer members, regular terms shall be three (3) years. One volunteer member shall be appointed for an initial term of one (1) year, or for an initial term of two (2) years, to provide for staggered terms of the members. The presiding disciplinary judge shall be appointed to the hearing panels by virtue of the position and shall serve in that capacity while employed as the presiding disciplinary judge. After the initial appointments of the volunteer members regular terms shall be three (3) years. Members shall serve at the pleasure of the court and may be dismissed from service at any time by the court. A member whose term has expired may continue to serve until the conclusion of any proceeding commenced prior to the expiration of the term, and decision thereon, and until a successor is appointed.

- (d) Vacancy. In the event of a vacancy on a hearing panel, the vacancy shall be filled in the manner provided for in the original appointment. Alternate hearing panel members. The presiding disciplinary judge may direct that not more than two additional hearing panel members, in addition to the regular hearing panel, be called and sit as alternate hearing panel members. If alternate hearing panel members are appointed, their identity as alternates shall be announced before the commencement of the hearing. If more than one alternate is appointed, one shall be a public member and the other alternate an attorney member. If there are two alternates, only the alternate public member may replace the public hearing panel member and only the alternate attorney member may replace the attorney hearing panel member. In the event there is one alternate, that alternate, regardless of whether an attorney member or public member may replace either an attorney or public member, provided that that only an attorney member may replace the presiding disciplinary judge. An alternate may substitute for a hearing panel member upon a hearing panel member being physically excused by the presiding disciplinary judge. Any alternate may discuss the case with panel members during the hearing but shall not deliberate with the panel members after the conclusion of the case. An alternate, upon being excused by the presiding disciplinary judge at the end of the hearing, shall not discuss the case with anyone until informed that a judgment and order has been issued. In the event a deliberating panel member is excused due to inability or disqualification, the presiding disciplinary judge may substitute an alternate hearing panel member to join in the deliberations. If an alternate joins the deliberations, the hearing panel shall begin deliberations anew.
- (e) {No changes}
- (f) {No changes}
- (g) Redesignate existing paragraph (h) to (g)

Rule 53. Complainants

(b) Information. The following information will be provided to a complainant, by the state bar, concerning charges made against a lawyer:

1. {no changes}
2. {no changes}
3. **Duty to Advise Complainant of Proceedings.** The state bar shall advise the complainant of a recommendation of any discipline, diversion, or pending agreement for discipline by consent. It shall also provide written notice of the hearing on the merits before a hearing panel, and of any public proceeding before the presiding disciplinary judge or the court. The state bar shall provide information to enable the complainant to ascertain the date, time and location of such proceedings, which may include the website address of the state bar or the disciplinary clerk. ~~In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement.~~
4. **Duty of Complainant.** In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement. A complainant's written objection to an agreement by consent must be submitted to the state bar within five (5) business days of bar counsel's notice. Bar counsel shall submit the objection to the presiding disciplinary judge.
5. {renumbered 4; no change}

Rule 54. Grounds for Discipline

(g) Conviction of a crime. A lawyer shall be disciplined as the facts warrant upon conviction of a misdemeanor involving a serious crime or of any felony. "Serious crime" means any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude. A conspiracy, a solicitation of another or any attempt to commit a serious crime, is a serious crime. Receipt by the state bar of a certified copy of the judgment of conviction, or other information of conviction of a lawyer, shall be treated and processed as is any other charge against a lawyer, except that the sole issue to be determined shall be the extent of the discipline to be imposed. In any discipline proceeding based on the conviction, proof of conviction shall be conclusive evidence of the attorney's guilt of the crime. Lawyers shall comply with the duty to self-report convictions as set forth in Rule 61(c)(1).

Rule 55. Initiation of Proceedings; Investigation

(b) Screening Investigation and Recommendation by the State Bar. When a determination is

made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that he or she is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by the state bar until the respondent has been afforded an opportunity to respond in writing to the charge.

2. Action Taken by the State Bar.

A. Dismissal.

(ii) Review by Committee. If bar counsel dismisses the charge, the complainant may, within ten (10) days of receipt of the explanation of dismissal, submit to the state bar an objection to bar counsel's decision, which shall be reviewed by the committee. Objections shall be referred to the committee for decision. The committee shall review the matter and make a determination as provided in subsection (c) below; provided, however, that the committee shall sustain the dismissal unless it constituted an abuse of discretion. The committee may, rather than sustaining or overturning a dismissal, direct bar counsel to conduct further investigation. When the committee sustains a dismissal, it shall furnish the complainant a written explanation of its determination.

B. Recommendation Other than Dismissal. If, after investigation, bar counsel determines a recommendation for diversion, stay, probation, restitution, admonition, ~~or~~ assessment of costs and expenses or probable cause is appropriate, bar counsel shall provide to the complainant and to respondent a written explanation of the recommendation. Bar counsel shall inform the complainant of the right to submit a written objection, and the respondent of the right to submit a summary of the response to the charges, not to exceed five (5) pages. Such documents shall be filed with the state bar within ten (10) days of receipt of the explanation. The state bar shall submit complainant's objection, if any, to the committee along with bar counsel's report of investigation and recommendation.

(c) Decision by Committee. Any recommendation by the state bar for a disposition other than dismissal shall be reviewed by the committee.

4. Disposition Prior to Formal Complaint.

A. Within ten (10) days of service of an order of diversion, stay, probation, restitution, admonition, or assessment of costs and expenses entered by the committee, respondent has the right to demand that a formal proceeding be instituted, whereupon such order shall be vacated and the matter disposed of in the same manner as any other matter instituted before the presiding disciplinary judge. Respondent shall file a demand for a formal proceeding with the committee and submit a copy to bar counsel.

- A. Make a finding probable cause exists and order an admonition, probation, restitution, assessment of costs and expenses, or a stay; or
 - B. {No changes}
1. {No changes}
 2. {No changes}
 3. Filing of Committee Decision. The committee shall file its decision and order and shall serve a copy on the respondent or respondent's counsel and with the Records Manager of the Lawyer Regulation Office of the state bar.
 4. Disposition Prior to Formal Complaint
 - A. {No changes}
 - B. Within ten (10) days of service of an order of diversion, stay, probation, restitution, admonition, or assessment of costs and expenses entered by the committee, respondent has the right to demand that a formal proceeding be initiated by filing a demand with the committee and submit a copy to bar counsel. Upon receipt of the demand, the committee shall issue an ~~whereupon~~ such order shall be vacated vacating the earlier order and direct bar counsel to file a complaint with the presiding disciplinary judge for institution of formal proceedings. The committee shall serve a copy of the order on state bar counsel of record and the respondent or respondent's counsel.

Rule 56. Diversion

(c) ~~Approval of Diversion Agreement or Order.~~ If diversion is offered and accepted the agreement is entered prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and the state bar. If bar counsel recommends diversion is offered and entered after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion agreement shall be submitted to the committee for consideration. If the committee rejects the recommendation, diversion agreement, the matter shall proceed as otherwise provided in these rules. If diversion is offered and entered accepted after a complaint has been filed, the matter shall proceed pursuant to Rule 58 57, the diversion agreement shall be submitted to the presiding disciplinary judge or the court, depending on the body before which the matter is pending. If the diversion agreement is rejected, the matter shall proceed as provided in these rules.

Rule 58. Formal Proceedings

(c) Initial Case Management Conference. Within ten (10) days after the time for filing an answer has expired been filed, the presiding disciplinary judge shall contact the parties and hold a mandatory case management conference for purposes of establishing the discovery schedule, as well as scheduling the hearing on the merits and all other prehearing conferences, unless a notice

of agreement for discipline by consent or an agreement for discipline by consent has been filed. Bar counsel and respondent, and respondent's counsel, if any, shall appear for the initial case management conference. The parties may participate in the conference telephonically or by other appropriate electronic means.

(d) Default Procedure; Aggravation/Mitigation Hearing. If respondent fails to answer within the prescribed time, the disciplinary clerk shall, within ten (10) days thereafter, enter that party's default and serve a copy of the notice of default upon respondent and bar counsel. A default ~~shall not be entered by the disciplinary clerk~~ shall be effective ten (10) days after the entry of default upon which the allegations in the complaint shall be deemed admitted. A default shall not become effective if the respondent pleads or otherwise defends as provided by these Rules if ~~the respondent files an answer or otherwise defends prior to the expiration of ten (10) days from the service of the notice~~ entry of default by the disciplinary clerk. ~~default. Otherwise, a default shall be entered by the disciplinary clerk eleven (11) days after the notice of default is filed and served and the allegations in the complaint shall be deemed admitted.~~ Entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz.R.Civ.P. The presiding disciplinary judge shall schedule an aggravation/mitigation hearing before the hearing panel. Not less than fifteen (15) days before the date set for the aggravation/mitigation hearing, the presiding disciplinary judge shall serve notice of the hearing on the parties. The hearing shall be held not earlier than fifteen (15) days nor later than thirty (30) days after the entry of default. The hearing panel shall prepare a report as provided in paragraph (k) of this rule.

Rule 59. Review by the Court

(c) Stay Pending Appeal. A respondent may seek a stay of the decision of the hearing panel by filing ~~the a~~ request with the hearing panel within ten (10) days of the date the report was filed. Within five (5) days of a respondent filing an application for stay pending appeal, the State Bar may file a response with the hearing panel. The application for stay pending appeal shall be granted subject to appropriate conditions of supervision, except when an interim suspension has been ordered or when the hearing panel, in its discretion, determines no conditions of supervision will protect the public while the appeal is pending.

Rule 60. Disciplinary Sanctions

(a) Types and Forms of Sanctions. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

2. Suspension. Suspension may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not in excess of five (5) years. Suspended members shall remain suspended until the court enters an order reinstating the member to the practice of law in Arizona or upon order of the presiding disciplinary judge pursuant to Rule 64(e)(2)(B).

(b) Assessment of the Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be deferred, suspended, reduced or waived.

1. Statement of costs; objections. At the conclusion of the disciplinary proceedings or the entry of a disciplinary sanction by the presiding disciplinary judge or the hearing panel, the state bar shall file an itemized statement of costs and expenses on proven or admitted counts and shall serve a copy on respondent and the disciplinary clerk. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent may file objections within five (5) days of service of the statement of costs and expenses and shall serve a copy on the state bar and the disciplinary clerk. The presiding disciplinary judge or the hearing panel, after considering the statements of costs and expenses and any objections filed by the respondent, or respondent's counsel, shall pass upon the objections and by order correct the statement of costs and expenses to the extent that it requires correction. Such order shall be filed with the disciplinary clerk and a copy served on the bar counsel of record and respondent. The respondent or state bar may contest the assessment of costs and expenses by filing an appeal as set forth in Rule 59. An appeal of the costs and expenses shall not stay or otherwise delay the underlying judgment and order of the presiding disciplinary judge or the hearing panel. Nor shall an objection to or an appeal of the assessment of costs and expenses serve to appeal or extend the time to appeal any underlying judgment and order.

2. Procedure.

~~A. Upon Final Order of the Presiding Disciplinary Judge or the Hearing Panel. If the disciplinary sanction ordered by the presiding disciplinary judge or the hearing panel is not appealed, the state bar shall file a final statement of costs and expenses with the disciplinary clerk within twenty (20) ten (10) days after the time to appeal has expired. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent shall file any objections to the statements of costs and expenses within ten days of service. The presiding disciplinary judge or the hearing panel, after considering the statements of costs and expenses and any objections filed by the respondent, or respondent's counsel, if any, shall prepare a report and order assessing costs and expenses and shall file the same with the disciplinary clerk and serve a copy on the bar counsel of record and respondent. The respondent or state bar may contest the assessment of costs and expenses by filing an appeal as set forth in Rule 59.~~

~~B. Upon Final Order of the Court. Upon final order of the court affirming or imposing any disciplinary sanction, the state bar and the disciplinary clerk shall file a final statement of costs and expenses with the clerk of the court within ten (10) days after the clerk has given notice that a decision has been rendered. The clerk of the court or the~~

~~court may enter an order assessing costs and expenses or remand the matter to the presiding disciplinary judge or the hearing panel for such a determination.~~

Comment

Assessment of costs and expenses is presumed. [Present examples of factors to determine if costs and fees may be reduced, deferred or waived. The costs and expenses related to the proceedings are not considered in determining hardship. Pam Treadwell-Rubin and Scott Rhodes had language on this]

Rule 61. Interim Suspension by the Court

(c) Procedure.

2. All Other Grounds for Interim Suspension. The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel report.

A. Temporary Restraining Order. Upon verified application in or with the motion, or upon its own motion, the presiding disciplinary judge may issue an order in the nature of a temporary restraining order, with such notice as the judge may prescribe, imposing temporary conditions of probation on the lawyer, or temporarily suspending the lawyer, or both. Any order issued under this provision shall become effective as ordered by the presiding disciplinary judge and remain in effect unless modified or dissolved, as necessary, after a hearing as prescribed in subpart D.

C. Hearing. If an evidentiary hearing is ordered, it shall be held within ten (10) days of the order. Within five (5) days after the matter is deemed submitted or a hearing is held, the presiding disciplinary judge shall issue and file a final judgment and order ~~a report in this court containing findings of fact, conclusions of law and a recommendation. After receiving the presiding disciplinary judge's report, the court shall consider the matter and issue an order or decision forthwith.~~ Respondent may file a petition for review with the court.

Rule 64. Reinstatement; Eligibility

(c) Additional Requirements. If the applicant has been on disability inactive status or suspended for a period of five (5) years at the time the application is filed, or has been disbarred, in addition to other requirements of these rules relating to reinstatement, the applicant shall be required to apply for admission and pass the bar examination as required unless the applicant meets the criteria to apply for reinstatement pursuant to paragraph (f)(1)(B). The applicant shall pay the fees required of an applicant for original admission to the practice of law in addition to fees, costs and expenses required of all applicants for reinstatement.

(e) Reinstatement After Suspension by the Presiding Disciplinary Judge, the Hearing Panel, or the Court.

2. Six Months or Less.

A. Application. A lawyer who has been suspended for six (6) months or less may apply for reinstatement no sooner than ten (10) days before the expiration of the period of suspension by filing with the disciplinary clerk and by serving upon the state bar an application affidavit for reinstatement. The application affidavit shall be on a form approved and provided by the court and shall include an avowal that the lawyer has fully complied with the requirements of the suspension judgment or order, and has paid all required fees, costs and expenses. The lawyer need not show proof of rehabilitation. If an application affidavit is not filed within one hundred eighty (180) days after expiration of the period of suspension the reinstatement procedure set forth in Rule 65 shall apply.

B. Opposition. Within ten (10) days of service of the application affidavit, or within the time period permitted by the presiding disciplinary judge, the state bar may file and serve an opposition to the application affidavit. If an opposition is filed, the matter shall be submitted to the presiding disciplinary judge for review and the member may not resume the practice of law until reinstated by order of the presiding disciplinary judge. If no timely opposition is filed, the state bar shall be deemed to consent to reinstatement, and the member may resume the practice of law upon order of the presiding disciplinary judge.

Rule 65. Reinstatement; Application and Proceedings

(a) Application for Reinstatement. Except as may otherwise be provided in Rules 63(g) and 64, a lawyer may be reinstated to active membership only as provided in this rule.

3. Required Fees and Payments.

A. Application Fee. As a prerequisite to filing and before investigation of the application, every applicant for reinstatement shall pay to the records manager of the state bar an application fee, as set by the court, along with the state bar's estimate of the costs of its investigation and the costs and expenses of all related proceedings before the presiding disciplinary judge, the hearing panel, or the court to the disciplinary clerk. ~~This fee shall represent an estimate of the costs of investigation by the state bar and the costs and expenses of all related proceedings before the presiding disciplinary judge, the hearing panel, and the court.~~ If the lawyer's payment is less than the actual cost of investigation and subsequent proceedings, the lawyer shall be required to satisfy such deficiency before the application is reviewed by the court. Any excess costs advanced shall be promptly refunded to the lawyer at the conclusion of the proceedings. Any

subsequent costs or expenses incurred shall be paid before the lawyer is reinstated by the court.

B. Costs and Expenses of Disciplinary Proceedings. Prior to filing the application, the applicant shall pay all outstanding costs and expenses of any disciplinary proceeding. Verification of such payment in the form of an affidavit from the records manager of the state bar must accompany the application.

BC. Amounts Owing to Client Security Fund. Prior to filing the application, the applicant shall also pay any sums owing by the lawyer to the client security fund due to prior discipline, disability or reinstatement proceedings. Verification of such payment in the form of an affidavit from the Administrator of the Client Protection Fund must accompany the application.

CD. Membership Fees and Other Charges. No reinstatement shall become effective until membership fees and other charges accruing after the application for reinstatement has been granted ~~filing of such application have been paid.~~

Rule 70. Public Access to Information

(a) Availability of Information. Except as otherwise provided in these rules, the state bar file, the record maintained by the disciplinary clerk, and all proceedings shall be open to the public upon

3. dismissal by the state bar following a screening investigation for six months from the date of notification to respondent or complainant (if any) of the dismissal;
4. dismissal, in cases not resulting in a screening investigation, for six months from the date of notification to respondent or complainant (if any) of the dismissal;
5. the filing of a complaint, motion, or petition in proceedings for summary or interim suspension or pursuant to Rules 54(g), 54(h), or 66;

(c) Authorized Disclosures ~~by State Bar.~~ Before the record and proceedings are made public, they shall not be disclosed by the state bar or disciplinary clerk or committee, except that

1. {no changes}
2. {no changes}
3. for matters in which the disposition is confidential under these rules, the state bar, disciplinary clerk or committee may confirm, ... {no further changes}
4. the state bar, committee or disciplinary clerk, pursuant to a valid subpoena, {no further changes}
5. the state bar, committee or disciplinary clerk may disclose the records and proceedings to... {no further changes}

(g) Sealing the Record/Protective Orders. Upon request by a party or by a person from whom the information or evidence was obtained, or upon a request by an interested non-party or the presiding disciplinary judge's own initiative, and for good cause shown, the presiding disciplinary judge may issue an order in a pending matter, sealing a portion of the record and/or state bar file and taking other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding that the remaining record in the matter is made public. Sealed material shall be opened and viewed only by ~~an order of~~ the committee, the presiding disciplinary judge, a hearing panel, the board or the court for use by such body and the parties in pending proceedings, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person who is the subject of the information. A party aggrieved by an order relating to a request for a protective order may seek review by filing a petition for special action with the court.

Rule 71. Expungement of State Bar Records

(e) Retention of Records Eligible for Expungement. Upon application to the chair or the vice-chair of the committee by bar counsel or respondent, for good cause shown and with notice and opportunity to be heard, records that are eligible for expungement under this rule may be retained for such additional period of time not exceeding three (3) years as the ~~committee~~ chair or vice-chair deems appropriate. Bar counsel or respondent may seek an additional extension or extensions of the retention period, in each case not exceeding three (3) years, as provided above.